

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

EDUARDO GUADALUPE VIZ-
CAYNO,

Plaintiff,

Case No. 5:24-CV-01203-JKP

v.

EMILY AKE, BADGE #3246, KERR-
VILLE POLICE DEPARTMENT;

Defendant.

ORDER ACCEPTING AND ADOPTING
REPORT AND RECOMMENDATION

Before the Court is United States Magistrate Judge Richard B. Farrer’s Report and Recommendation. *ECF No. 8*. Magistrate Judge Farrer recommends the Court dismiss this action for failure to prosecute or comply with court orders pursuant to Federal Rule of Civil Procedure 41(b), and for failure to state a non-frivolous claim pursuant to 28 U.S.C. § 1915(e). *Id. Pro se* Plaintiff Eduardo Guadalupe Vizcayno (“Vizcayno”) did not object to the Report and Recommendation. Upon consideration, the Court **ACCEPTS AND ADOPTS** the Report and Recommendation. As recommended, the Court **DISMISSES** this action.

BACKGROUND

On October 18, 2024, Vizcayno filed his request to proceed in forma pauperis (“IFP”) and proposed Complaint *ECF No. 1*. Therein, Vizcayno stated he had a monthly income of \$10 to \$50 and monthly expenses totaling approximately \$500.00. *Id.* On December 3, 2024, Magistrate Judge Farrer found this information sufficient to show the imposition of the full filing fee would cause an undue financial hardship, and the Court granted the application to proceed IFP.

ECF No. 3.

In his proposed Complaint, Vizcayno alleges violations of copyright infringement, slander, sexual assault, perjury, and “racial treatment of indifference, racially discrimination, racially retaliation, and racial harassment” by Kerrville Police Officer Emily Ake. *ECF No. 1-1 at 7.* Finding these allegations lacked sufficient detail, such as dates, locations, and specific actions, and that it was unclear which facts pertained to which legal claims, Magistrate Judge Farrer further ordered Vizcayno to file, within 30 days, an Amended Complaint clarifying the factual and legal bases for the claims. *ECF No 3 at 4.* Vizcayno failed to comply with Magistrate Judge Farrer’s Order and file an Amended Complaint.

As such, on January 24, 2025, Magistrate Judge Farrer issued a Report and Recommendation in which he recommends the Court dismiss this action for failure to prosecute or comply with court orders pursuant to Federal Rule of Civil Procedure 41(b), and for failure to state a non-frivolous claim pursuant to 28 U.S.C. § 1915(e). *ECF No. 8.* In the Report and Recommendation, Magistrate Judge Farrer notes “Vizcayno has not responded to the Court’s prior Order and has not provided any information to the Court since his initial Motion to Proceed IFP in October 2024.” *Id. at 2.* Magistrate Judge Farrer further notes “[i]n the absence of a response, the Court concludes from the Complaint that Vizcayno has not stated any non-frivolous claim on which relief may be granted; rather, his alleged claims lack sufficient factual detail to state a plausible claim for relief and appear fanciful and delusional.” *Id. at 3.* Magistrate Judge Farrer adds “because Vizcayno is proceeding *pro se*, any delay here is attributable to him, not an attorney.” *Id. at 3.* Vizcayno did not file an Objection to Magistrate Judge Farrer’s Report and Recommendation.

Instead, on February 3, 2025, Vizcayno filed an Advisory to the Court. *ECF No. 10*. In his Advisory, Vizcayno presents indecipherable, nonsensical arguments and lists the cause number of another one of his cases, 5:24-CV-00880. *Id. at 2*.

STANDARD OF REVIEW

Any party who seeks review of all or a portion of a Magistrate Judge's Report and Recommendation must serve and file specific written objections within fourteen days after being served with a copy. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(2). If a party does not timely object to all or a portion of a Magistrate Judge's Report and Recommendation, the District Court will review the unobjected-to proposed findings and recommendations to determine whether they are clearly erroneous or contrary to law. *Johnson v. Sw. Research Inst.*, 210 F. Supp.3d 863, 864 (W.D. Tex. 2016) (citing *U.S. v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.)(per curiam), *cert. denied*, 492 U.S. 918 (1989)).¹

DISCUSSION

Consistent with 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b)(2), the Court reviewed the subject Report and Recommendation for clear error on the face of the record. The Court finds no such error.

CONCLUSION

Accordingly, the Court **ACCEPTS** Magistrate Judge Richard B. Farrer's findings and recommendation and **ADOPTS** the Report and Recommendation. *ECF No. 8*. As recommended, the Court **DISMISSES** this action pursuant to 28 U.S.C. § 1915(e)(2)(B) for Vizcayno's failure


¹ While Federal Rule 72(b) does not facially require any review in the absence of a specific objection, the advisory committee notes following its adoption in 1983 state: "When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Further, failure to object shall also bar appellate review of those portions of the Magistrate Judge's Report and Recommendation that were ultimately accepted by the district court, unless the party demonstrates plain error. *Thomas v. Arn*, 474 U.S. 140, 150–53 (1985); *United States v. Wilson*, 864 F.2d at 1221.

to state a non-frivolous claim or any claim on which relief may be granted. The Court will issue Final Judgment separately.

The Clerk of Court is **DIRECTED** to close this case.

It is so ORDERED.

SIGNED this 25th day of February, 2025.



JASON PULLIAM
UNITED STATES DISTRICT JUDGE